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7 **United States District Court**
8 **Central District of California**

9
10 ALICE LEE and DAVID W. MARTIN, on
11 behalf of themselves and all others
12 similarly situated,

13 v.
14 Plaintiffs,

15 GLOBAL TEL*LINK CORPORATION,
16 Defendant.

17 Case No. 2:15-cv-02495-ODW(PLAx)

18
19 **ORDER GRANTING MOTION FOR**
CLASS CERTIFICATION AND
PRELIMINARY APPROVAL OF
CLASS SETTLEMENT [135] AND
DENYING AS MOOT
APPLICATION TO FILE
DOCUMENT UNDER SEAL,
MOTION FOR SUMMARY
JUDGMENT, MOTION TO
EXCLUDE, APPLICATION TO FILE
UNDER SEAL, AND MOTION TO
CERTIFY CLASS [120, 111, 98, 87,
72]

20 **I. INTRODUCTION**

21 This case is about automated collect call messages that occur when inmates in
22 jails and prisons attempt to call a number and have the recipient of the call pay the
23 charges. (See First Consolidated Class Action Complaint (“FCCAC”) ¶¶ 11–18.)
24 Plaintiff alleges that the automated nature of the calls to cell phone numbers violates
25 the Telephone Consumer Protection Act (“TCPA”). (*Id.* ¶¶ 47–53.) While Defendant
26 Global Tel*Link Corporation (“GTL”) maintains that it would prevail on the merits if
27 the case were to be tried, the parties have reached a settlement to avoid risk for both
28 sides. (See Mot. 1–2, ECF No. 135.) Plaintiff has moved for preliminary approval of

1 the settlement agreement, provisional class certification, and approval of the form of
 2 class notice, which GTL has not opposed. For the reasons discussed below, the Court
 3 provisionally **GRANTS** the motion for class certification and preliminarily
 4 **APPROVES** the class settlement.

5 **II. BACKGROUND**

6 The basics of the putative class and the proposed settlement are outlined below.

7 **A. Factual Background**

8 GTL provides collect-call services to inmates at jails and prisons throughout the
 9 United States. (*See* FCCAC ¶ 11.) The service requires that the called party establish
 10 a billing relationship with GTL in order to pay for and receive calls from an inmate.
 11 (*Id.* ¶ 13.) When an inmate attempts to place a collect call to a telephone number for
 12 which there is no pre-established billing relationship with GTL, the call attempt will
 13 trigger a separate prerecorded “Notification Call” that tells the called party that they
 14 need to set up an account in order to pay for and receive the call. (*Id.* ¶ 14.)

15 Plaintiff¹ purports to represent a class of persons who have received such calls
 16 on their cellular telephone, with each call allegedly representing a violation of the
 17 TCPA’s prohibition against automated calls to cell phones without prior express
 18 permission from the called party. (*Id.* ¶ 35); *see* 47 U.S.C. § 227(b)(1)(iii). GTL
 19 contends that its Notification Calls are exempt from the TCPA due to an order from
 20 the Federal Communications Commission. (Mot. 3.) In response, Plaintiff argues that
 21 the calls are not exempt because GTL does not provide an opt-out mechanism in
 22 compliance with the FCC’s order. (*Id.*) The parties now state that they have entered
 23 into a settlement due to the fact that the litigation is highly contentious and there is
 24 risk to both sides in not settling. (*Id.* at 1–2.)

25 Plaintiffs filed the putative class action Complaint on December 5, 2014, and it
 26 was assigned to this Court on April 3, 2015. (*See* ECF No. 12.) Plaintiff’s FCCAC
 27 asserts only one claim: violations of the TCPA. (FCCAC ¶¶ 47–53.)

28 ¹ The relevant lead Plaintiff in this action is David M. Martin. (*See* Mot. 3.)

1 **B. Settlement Terms**

2 The parties propose no sub-classes; the class will be uniform. (*See* Mot. 4–5.)

3 **1. Relevant Definitions**

4 Plaintiffs define the proposed class as follows: “All persons using and/or
 5 subscribing to a mobile telephone number to which a Notification Call was placed
 6 during the Class Period.” (*Id.* at 4.) The Judge and court staff working on this case
 7 are excluded from the class definition, as are their immediate family members. (*Id.*)
 8 The parties estimate that there are 1,800,000 members in the proposed class. (*Id.* at
 9 5.)

10 The definition of the Class Period is December 5, 2010, through the date of
 11 entry of a Preliminary Approval Order. (*Id.* at 4.)

12 A Notification Call is defined as “a call (i) placed by or on behalf of GTL, (ii)
 13 to a number attempted in a Failed Inmate Call Attempt, (iii) using a prerecorded voice
 14 message, (iv) to explain in sum and substance that inmate calls could not be
 15 completed and/or billed, and that the called party could take certain steps to arrange
 16 for billing and/or set up a prepaid account.” (*Id.*)

17 A Failed Inmate Call Attempt is a telephone call attempted by an inmate or
 18 prisoner through GTL’s service to a phone number for which GTL had no billing
 19 relationship and therefore no means to bill the call to the called party. (*Id.*)

20 **2. Settlement Fund and GTL’s Changing Practices**

21 GTL will pay \$8,800,000 into a common settlement fund. (*Id.* at 5.) Class
 22 members who submit a claim will receive a pro-rata share of the balance of that
 23 amount—after payment of notice and administration costs, any Court-ordered award
 24 of attorneys’ fees and expenses, and any Court-ordered incentive award for Plaintiff.
 25 (*Id.*) Because the amount that class members will receive depends on the number of
 26 claims submitted, the parties cannot estimate with specificity the amount that
 27 members who submit claims are likely to receive. (*Id.*) However, they conservatively
 28 estimate that if the percentage of potential class members who submit claims is in

1 keeping with typical TCPA cases (roughly 5%), then each class member will receive
2 about \$60. (*Id.* at 12.)

3 In addition to the payment to class members who submit claims, GTL will
4 change its practices to include in all Notification Calls an interactive-voice and/or key-
5 activated opt-out mechanism that the called party may use to opt-out of all future
6 Notification Calls. (*Id.* at 5.) The called party will also be provided with a toll-free
7 number that can be used to opt-out. (*Id.*) Finally, opting out is effective to block all
8 future calls, regardless of the number of times an inmate attempts to call that number.
9 (*Id.*)

10 The settlement amount shall be reserved and paid out as follows:

11

12 (1) Opting In and Opting Out: After Notice is initially sent (*see* Section on
13 Notice, below), class members will have 60 days in which to submit timely
14 and valid requests for exclusion. (*Id.* at 8.) Requests for exclusion must be
15 mailed to the settlement administrator. (*Id.*) Similarly, objections to the
16 settlement must be made within 60 days. (*Id.*) Objections must be filed
17 with the Court. (*Id.*) The parties have agreed that in order to ensure that
18 only valid class members can object to the settlement, objectors must
19 provide a valid claim ID, demonstrate ownership of a telephone number that
20 appears on the class list based on GTL's records, or produce telephone
21 records establishing receipt of a Notification Call. (*Id.*)

22

23 (2) Release of Claims: Any class member who does not opt out within the 60-
24 day period described above will release all claims against GTL arising out of
25 Notification Calls, calls made by automatic telephone dialing systems,
26 and/or artificial or prerecorded voice calls to mobile telephones during the
27 class period. (*Id.*)

28

(3) Calculation of Payment: Once the claims period has ended, the settlement administrator will calculate the amount each class member is to receive (the amount will be uniform among all class members, aside from any incentive award to the named plaintiff). (*See id.*)

(4) Method of Payment: The settlement administrator will send checks to the class members who submit valid claims. (*See id.* at 5–6.) The recipients will then have 120 days to cash the check. (*Id.* at 5.) Any amounts that remain uncashed after 120 days will be part of a second distribution, whereby any remaining funds will be distributed to class members who did cash their checks, provided that each member would receive at least \$10 in the second distribution. (*Id.*) After 120 days of the date of the checks in the second distribution, any remaining funds will be paid to the National Consumer Law Center, which works with the FCC to enforce the protections of the TCPA. (*Id.* at 5–6.) No funds will revert to GTL. (*Id.*)

(5) Attorneys' Fees and Incentive Award: Class counsel has indicated that they will file a motion for attorneys' fees and for an incentive award for the named plaintiff. (*Id.* at 8–9.) Further, the parties have not agreed that GTL is stipulating to a certain amount of fees or awards; GTL is permitted to oppose the requested awards. (*Id.*) Moreover, the parties have agreed that the settlement is not contingent upon any such awards being granted. (*Id.*)

(6) Costs to be Deducted from the Settlement Amount: Deducted from the settlement fund will be: costs of notice and administration of settlement; any Court-ordered award of attorneys' fees and expenses; and any Court-ordered incentive award for Plaintiff. (*Id.* at 5.)

1 (7) Blow-Up Clause: The parties have not identified any particular number of
2 claims or opt-outs that would void the settlement. (*See generally id.*)
3

4 **C. Class Notice**

5 Notice will be given to class members as follows, within 120 days after the
6 Court grants the Motion for Preliminary Approval. (*Id.* at 19.)
7

8 (1) GTL already produced records of its Notification Calls during the discovery
9 process, and it further refined those records to compile a settlement class list
10 containing the unique telephone numbers of each person that appears to be
11 in the class, based on the records. (*Id.* at 6–7.)
12

13 (2) Next, the parties will subpoena wireless cell phone providers (including
14 Verizon, AT&T, T-Mobile, Cricket Wireless, US Cellular, and others) to
15 obtain the email addresses and mailing addresses associated with those
16 phone numbers. (*Id.*)
17

18 (3) The settlement administrator will then either mail or email written notice to
19 persons whose telephone numbers appear on the settlement class list. The
20 administrator will also send out a second reminder email before the claims
21 period ends. (*Id.*)
22

23 There will also be a website dedicated to the settlement, with a long-form notice
24 available. (*Id.* at 7.) The website will provide for online submission of the Claim
25 Forms and will allow settlement class members to update their contact information.
26 (*Id.*) A toll-free number will also be provided in order for potential class members to
27 obtain more information. (*Id.*) Finally, the settlement administrators will carry out
28 internet publication through the use of Facebook Newsfeed. (*Id.*)

III. CLASS CERTIFICATION

In order to grant preliminary approval of the class-wide settlement, the Court must certify the class for purposes of settlement.

A. Legal Standard

Class certification is appropriate only if “each of the four requirements of Rule 23(a) and at least one of the requirements of Rule 23(b)” are met. *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001). Under Rule 23(a), the plaintiff must show that: “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). These requirements are generally referred to as numerosity, commonality, typicality, and adequacy. *See Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 588 (9th Cir. 2012).

Next, the proposed class must meet the requirements of at least one of the three types of class actions listed in Rule 23(b). *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2548 (2011). Those three types are class actions where: (1) individual class members' actions would create a risk of inconsistent adjudications or adjudications that would unfairly bind other class members; (2) the defendant's actions have made final injunctive relief appropriate for the class as a whole; and/or (3) questions of law or fact predominate over questions affecting only individual class members, and a class action is superior to other methods of adjudication. Fed. R. Civ. P. 23(b).

Where class certification is sought for settlement purposes only, the certification inquiry still “demand[s] undiluted, even heightened, attention.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *see also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998).

B. Discussion

For the reasons discussed below, the Court finds that all of the requirements for

1 class certification are met.

2 **1. Rule 23(a)**

3 The putative class satisfies the requirements of numerosity, commonality,
4 typicality, and adequacy.

5 **i. Numerosity**

6 While no “exact numerical cut-off is required” for the numerosity requirement,
7 “numerosity is presumed where the plaintiff class contains forty or more members.”
8 *In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009). The
9 estimated class size in this case is almost 2 million members. (See Mot. 5.) Thus, this
10 class quite easily meets the requirement.

11 **ii. Commonality**

12 Next, the claims of potential class members demonstrate common questions of
13 fact and law. All that is required under this element is a “single significant question of
14 law or fact.” *Mazza*, 666 F.3d at 589. Here, the issues are essentially the same for all
15 members: they all received a Notification Call on their cellular telephones and were
16 unable to opt out, allegedly in violation of the TCPA. (See FCCAC ¶ 35.) Common
17 questions among the class include: (1) whether the calls used a “prerecorded voice,”
18 and (2) whether the calls complied with the FCC’s opt-out requirements. (See
19 generally *id.*) At this juncture, there are no discernable individualized issues that
20 might detract from the common questions of fact and law. As such, the class meets
21 this requirement.

22 **iii. Typicality**

23 The named plaintiff in this action also meets the typicality requirement.
24 Typicality in this context means that the representative claims are “reasonably co-
25 extensive with those of absent class members; they need not be substantially
26 identical.” *Hanlon*, 150 F.3d at 1020. Here, Plaintiff Martin (like all class members)
27 contends that he received a robocall, that it was made without prior express consent,
28 and that it was not exempt per the FCC’s order. (See FCCAC ¶¶ 19–27.) This

1 demonstrates that the lead plaintiff shares common material factual and legal issues
 2 with the other settlement class members.

3 **iv. Adequacy**

4 Finally, the named plaintiff and his counsel appear to satisfy the adequacy
 5 requirement for representing absent class members. This requirement is met where
 6 the named plaintiffs and their counsel do not have conflicts of interest with other class
 7 members and will vigorously prosecute the interests of the class. *Hanlon*, 150 F.3d at
 8 1020. Here, there is no evidence of any potential conflicts. The class counsel appear
 9 generally well qualified in that they have successfully litigated TCPA actions in the
 10 past, and they seem to have diligently represented named plaintiff and the class
 11 through the discovery and motion practice that has occurred in this case thus far.
 12 (Sostrin Decl. ¶¶ 15–21, ECF No. 135-1; Lester Decl. ¶¶ 8–14, ECF No. 135-4.) As
 13 such, the proposed class and its representatives satisfy the Rule 23(a) requirements.

14 **2. Rule 23(b)(3)**

15 This action is maintainable under Rule 23(b)(3), which has two requirements:
 16 (1) that questions of law or fact common to class members predominate over any
 17 questions affecting only individual class members, and (2) that resolution of the issues
 18 in this case on a class-wide basis are superior to any other available methods of
 19 adjudication. Questions of law or fact common to class members in this case
 20 predominate over individualized questions because the only issues that appear to be at
 21 stake—whether the calls were prerecorded and whether the FCC exempts them from
 22 the TCPA—are common to the class. (See FCCAC ¶¶ 47–53.) Further, a class action
 23 appears to be a far superior method of adjudicating the class members' claims. The
 24 sheer number of class members demonstrates that individual actions would not be
 25 efficient, and if each potential class member were to go it alone, the costs of litigation
 26 for each plaintiff would dwarf any recovery.

27 Thus, the class may be certified for settlement purposes under Rule 23(b)(3).

28 **IV. PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

1 Next, the Court must assess the proposed settlement itself to determine whether
2 it is fair to all parties. Fed. R. Civ. P. 23(e).

3 **A. Legal Standard**

4 “The claims, issues, or defenses of a certified class may be settled, voluntarily
5 dismissed, or compromised only with the court’s approval.” *Id.* “Approval of a class
6 action settlement requires a two-step process—a preliminary approval followed by a
7 later final approval.” *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal.
8 2016). “At the preliminary approval stage, the court ‘evaluates the terms of the
9 settlement to determine whether they are within a range of possible judicial
10 approval.’” *Id.* (quoting *Wright v. Linkus Enters., Inc.*, 259 F.R.D. 468, 472 (E.D.
11 Cal. 2009)). Thus, “the court may grant preliminary approval of a settlement and
12 direct notice to the class if the settlement: ‘(1) appears to be the product of serious,
13 informed, non-collusive negotiations; (2) has no obvious deficiencies; (3) does not
14 improperly grant preferential treatment to class representatives or segments of the
15 class; and (4) falls within the range of possible approval.’” *Id.* (quoting *Harris v.*
16 *Vector Mktg. Corp.*, No. C-08-5198 EMC, 2011 WL 1627973, at *7 (N.D. Cal. Apr.
17 29, 2011)).

18 **B. Discussion**

19 The Court determines that the settlement negotiations appear fair and adequate
20 and observes that the proposed settlement has no obvious deficiencies.

21 **1. Adequacy of Negotiations**

22 The Court is satisfied that the settlement here was the product of “serious,
23 informed, non-collusive negotiations.” *See Spann*, 314 F.R.D. at 319. Several factors
24 support Plaintiff’s contention that the settlement is fair: Plaintiff has declared that the
25 settlement was reached through arm’s length negotiations (Mot. 2); significant
26 discovery has occurred (*Id.* at 1); counsel has resolved TCPA actions before (*see*
27 Sostrin Decl. ¶¶ 15–21); GTL will be allowed to contest any award of attorneys’ fees
28 or an incentive award (Mot. 8–9); and the settlement agreement is not contingent on

1 an award of those fees (*Id.*). In other words, no markers of collusion appear present.

2 **2. Settlement Terms**

3 After reviewing the terms of the settlement, the Court determines that there are
4 no obvious deficiencies, the settlement does not unfairly give preferential treatment to
5 named plaintiffs, and it falls within the range of possible approval.

6 Assessing a settlement proposal requires the district court to balance a
7 number of factors: the strength of the plaintiffs' case; the risk,
8 expense, complexity, and likely duration of further litigation; the risk
9 of maintaining class action status throughout the trial; the amount
10 offered in settlement; the extent of discovery completed and the stage
11 of the proceedings; the experience and views of counsel; the presence
12 of a governmental participant; and the reaction of the class members
to the proposed settlement.

13 *Hanlon*, 150 F.3d at 1026. "Ultimately, the district court's determination is nothing
14 more than an amalgam of delicate balancing, gross approximations, and rough
15 justice." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525–26
16 (C.D. Cal. 2004) (internal citations and quotation marks omitted). Thus, "[t]he initial
17 decision to approve or reject a settlement proposal is committed to the sound
18 discretion of the trial judge." *Id.*

19 Here, as with most class actions, there was risk to both parties in allowing this
20 case to go to trial. As expressed in the motion for approval of the settlement, "both
21 Plaintiffs and Defendants strongly believe in the merits of their respective positions,
22 but they are also acutely aware of the uncertainties and risks associated with complex
23 class association litigation generally and this case in particular." (Mot. 14.) It is from
24 this perspective that the Court now considers the fairness of the terms of the
25 settlement.

26 **3. Settlement Funds**

27 The Court notes no obvious deficiencies in the amount and allocations of
28 settlement funds.

1 In the Ninth Circuit, there is no per se rule against incentive awards for class
2 representatives. However, “district courts [should] scrutinize carefully the awards so
3 that they do not undermine the adequacy of the class representatives.” *Radcliffe v.*
4 *Experian Info. Sols. Inc.*, 715 F.3d 1157, 1163 (9th Cir. 2013). In addition, “[w]hile
5 attorneys’ fees and costs may be awarded in a certified class action where so
6 authorized by law or the parties’ agreement, courts have an independent obligation to
7 ensure that the award, like the settlement itself, is reasonable, even if the parties have
8 already agreed to an amount.” *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d
9 935, 941 (9th Cir. 2011).

10 Here, however, the parties have not agreed to an amount for either attorneys’
11 fees or any incentive award. (Mot. 8–9.) Nor have they made the settlement of the
12 action contingent on either type of award. (*Id.*) As such, the Court sees no issue with
13 approving settlement on this basis; the Court will assess requests for any such awards
14 when they are filed.

15 **4. Release of Claims**

16 “Beyond the value of the settlement, potential recovery at trial, and inherent
17 risks in continued litigation, courts also consider whether a class action settlement
18 contains an overly broad release of liability.” *Spann*, 314 F.R.D. at 327. Here, class
19 members and individuals who fail to opt out will release only the claims “aris[ing] out
20 of the Notification Calls, calls made by automatic telephone dialing systems, and/or
21 artificial or prerecorded voice calls to mobile telephones.” (Mot. 8.) The Court is
22 satisfied that the released claims concern only the issues at stake in this litigation and
23 therefore concludes that the release “adequately balances fairness to absent class
24 members and recovery for plaintiffs with defendants’ business interest in ending this
25 litigation with finality.” *See Spann*, 314 F.R.D. at 327–28.

26 **5. Notice of Class Settlement**

27 In order to find that notice to absent class members is sufficient, the Court must
28 analyze both the type and content of the notice.

i. Type of Notice

Under Rule 23(c)(2)(B), “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.”

Here, counsel intends to use a consulting company to carry out Notice. (Mot. 6.) It will use the email and mailing address records gleaned obtained through subpoenas to the wireless providers corresponding with the cell phone numbers on GTL's list. (*Id.*) Then written notice will be effected through email and the U.S. Postal Service, and internet publication will be accomplished through Facebook. (*Id.* 6-7.) Because email and mailing addresses will be available through wireless providers, this notice is sufficient and most practicable under the circumstances.

ii. Content of Notice

Class notice must state “(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members.” Fed. R. Civ. P. 23(c)(2)(B)(i)–(vii).

The parties have provided a copy of the written Notice as an exhibit. (ECF No. 135-2, beginning at 51). It is comprehensive, covering the basics of the case, the class definition, and what the class action is claiming (violations of the TCPA). (*See id.*) It also explains the procedure for opting out or objecting, the ability to appear at the final approval hearing, and the binding effect on class members who do not opt out (even if they do not submit a claim for payment). (*Id.*) The content of the Notice meets all of the requirements of Rule 23(c)(2)(B)(i)–(vii).

IV. CONCLUSION

For the reasons discussed above, the Court **GRANTS** Plaintiffs' motion for provisional certification of the class and preliminary approval of class settlement. Per

1 the parties' request that the final approval hearing be held no sooner than 238 days
2 after the date of this Order (Mot. 18), the hearing shall be held on **December 4, 2017**
3 **at 1:30 p.m.** at the United States Courthouse, 350 West First Street, Courtroom 5D,
4 Los Angeles, CA 90012. Based on the parties' settlement and the Court's preliminary
5 approval thereof, the Court hereby **DENIES AS MOOT** the following pending
6 motions: GTL's Application to File Document Under Seal (ECF No. 120); GTL's
7 Motion for Summary Judgment (ECF No. 111); Plaintiff's Motion to Exclude (ECF
8 No. 98); GTL's Application to File Document Under Seal (ECF No. 87); and
9 Plaintiff's original Motion to Certify the Class (ECF No. 72).

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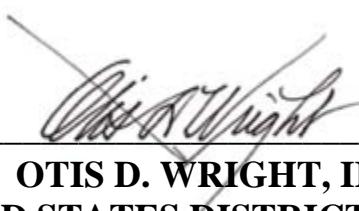
11 **IT IS SO ORDERED.**

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13 April 7, 2017

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17 **OTIS D. WRIGHT, II**
18 **UNITED STATES DISTRICT JUDGE**

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